

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA**

**V.**

**ANTHONY MICHAEL MIHALEY**

§  
§  
§  
§  
§

**CRIMINAL No. 6:07cr10-1**

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On October 27, 2008, the Court conducted a hearing to consider the United States' petition to revoke the supervised release of Defendant Anthony Michael Mihaley. The United States was represented by Allen Hurst, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk, Assistance Federal Public Defender.

Defendant originally pleaded guilty to the offense of Failure to Register as a Sex Offender, a Class C felony. The offense carried a statutory maximum imprisonment term of ten years. There is no United States Sentencing Guideline range for this violation, and Guideline section 2X5.1 provides:

If the offense is a felony for which no guideline expressly has been promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable.

U.S.S.G. § 2X5.1. Here, there was not a sufficiently analogous Guideline, and an offense level could not be calculated. A criminal history category of IV was computed.

On May 2, 2007, U.S. District Judge Michael H. Schneider sentenced Defendant to twelve months and one day imprisonment and three years supervised release, subject to the standard

conditions of release, plus special conditions which included complying with any federal, state, or local sex offender registration laws.

On October 19, 2007, Defendant completed his term of imprisonment and began the three year term of supervised release. The conditions of Defendant's release were modified on March 11, 2008. Under the modified terms of his supervised release, Defendant was prohibited in relevant part from using any controlled substances. The terms of Defendant's supervised release also required him to 1) report to the probation officer and submit a truthful and complete written report within the first five days of each month; 2) participate in a sex offender treatment program; and 3) participate in a program of testing and treatment for drug abuse.

In its petition, the United States alleges that Defendant violated these conditions. The United States alleges that 1) Defendant failed to submit a truthful and complete written report within the first five days of May and June 2008; 2) Defendant failed to attend sex offender treatment on multiple occasions in April, May, and June 2008; 3) Defendant failed to attend substance abuse counseling at The Beginning on April 23, 2008 and Defendant failed to submit urine specimens as part of this treatment on multiple occasions in May and June 2008; and 4) finally, on May 1, 2008, Defendant submitted urine specimens which tested positive for cocaine.

If the Court finds by a preponderance of the evidence that Defendant committed this violation, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3); *see also* 18 U.S.C. § 3583(g)(1). Section 7B1.1(a) of the Sentencing Guidelines indicates that if the Court finds by a preponderance of the evidence that Defendant violated conditions of supervision by possessing cocaine on or about May 1, 2008 and May 2, 2008, as evidenced by urine specimens submitted by Defendant on those dates, Defendant will be guilty of committing a Grade B violation, for which the Court shall revoke Defendant's term of supervised

release in favor of a term of imprisonment. U.S.S.G. § 7B3.1(a)(1). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade B violation is twelve to eighteen months. U.S.S.G. § 7B1.4(a).

Section 7B1.1(a) of the Sentencing Guidelines indicates that if the Court finds by a preponderance of the evidence that Defendant violated conditions of supervision by failing to submit a truthful and complete written report within the first five days of May and June 2008; failing to attend sex offender counseling in April, May, and June 2008; failing to attend substance abuse counseling in April 2008; failing to submit a urine specimen in May and June 2008; and by testing positive for cocaine use on May 1 and May 2, 2008, Defendant will be guilty of committing a Grade C violation, for which the Court may either revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of IV, the Guideline imprisonment range for a Grade C violation is six to twelve months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the violation. Further, the parties agreed that Defendant should be sentenced to twelve months and one day.

Pursuant to the Sentencing Reform Act of 1984 and the agreement of the parties, the Court **RECOMMENDS** that Defendant Anthony Michael Mihaley be committed to the custody of the Bureau of Prisons for a term of imprisonment of twelve months and one day to be served consecutively with the sentence in *State of Texas v. Anthony Michael Mihaley*, cause number 241–1228–08 from the 241<sup>st</sup> District Court in Smith County Texas with no supervised release to follow. The Court further **RECOMMENDS** that Defendant be imprisoned at the facility nearest

Las Vegas, Nevada.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael H. Schneider for adoption immediately upon issuance.

**So ORDERED and SIGNED this 28th day of October, 2008.**

  
\_\_\_\_\_  
JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE